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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,646	04/16/2004	Bernd Wahle	C 28.27 US	2294
23657 7590 04/29/2008 COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002				
EXAMINER				
KUMAR, PRIETI				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
04/29/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/826,646

**Applicant(s)**

WAHLE ET AL.

**Examiner**

PREETI KUMAR

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 36-39, 41, 42, 45-47, 49, 50 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-39, 41-42, 45-47 and 49-50, 53-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/19/2008 has been entered.

***Non-Final Rejection***

2. Applicant's election of 36-39, 41-42, 45-47 and 49-50, 53-55 read on the elected species wherein R is C-C-C; AO is C<sub>3</sub>H<sub>6</sub>O (propylene oxide); each R' and R'' is OC-CH<sub>2</sub>-S-SO<sub>3</sub>M and M is sodium and  $x+y+z = 50$  is acknowledged.

***Response to Amendment***

3. The objection to the disclosure is withdrawn in light of Applicants amendment to the claims which amendment is supported by the original German application on at least page 2.

4. The rejection of claim 37 under 35 U.S.C. 112, second paragraph, is withdrawn in light of Applicants amendment to the claims.

5. The rejection of claims 36-39, 41-42, 45-47 and 49-50, 53-55 are under 35 U.S.C. 103(a) as obvious over Benisek et al. (US 4,448,817) is maintained.

***Response to Arguments***

Applicant's arguments filed 2/19/2008 have been fully considered but they are not persuasive. Applicants urge that Benisek et al. do not teach the claimed invention

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since they disclose a pH of about 4 or less. This is not found convincing since Benisek et al. teach the claimed process of treating textile with the claimed composition having the recited formula. Benisek et al. illustrate in claim 4, (in col. 9, the second formula) exactly the same claimed elected formula recited by the instant claims 36-37 having a pH of about 4. See claim 1. While Benisek et al. do not teach the claimed pH of about 5, it is noted that there is no requirement that such a condition has to met for a proper 103 rejection. According to case law bearing on this point, the issue is what one of ordinary skill in the art would learn from a reference's disclosure when considered as a whole. In re Courtright, 377 F.2d 647, 153 USPQ 735, 739 (CCPA 1967). In view of that, it would therefore have been obvious for one of ordinary skill to arrive at the claimed process of treating a textile with the claimed composition having a pH of about 5, since Benisek et al. illustrate in claim 4, (in col. 9, the second formula) exactly the same claimed elected formula having a pH of about 4 and furthermore one of ordinary skill would have been apprised to modify the pH of the composition by optimizing the amount of HCl and citric acid in the aqueous composition to facilitate exhaustion of the polymer onto the textile. Accordingly the rejection over Benisek et al. (US 4,448,817) has been maintained.

### ***Claim Rejections***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 36-39, 41-42, 45-47 and 49-50, 53-55 are rejected under 35 U.S.C. 103(a) as obvious over Benisek et al. (US 4,448,817).

Benisek et al. teach a method finishing keratinous textile articles, for example wool fabrics, which comprises treating the articles with an anti-felt polymer for example isocyanate functional or bunte salt functional polymers, and a polymer of chlorinated ethylenically unsaturated monomer, for example polyvinyl chloride, polyvinylidene chloride, polypropylene, and dichlorobutadiene. Thereafter, the articles are treated with an anionic titanium or zirconium complex at low pH. Textiles so treated exhibit both shrink-resistant and flame-retardant properties. See abstract.

Regarding the claimed cleaning surfactant and textile fiber softening agents, Benisek et al. teach water-soluble curable shrink-resist polymers having ionic charges. Isocyanate functional polymers, and especially blocked isocyanate polymers, are preferred particularly water-soluble blocked isocyanates such as polycarbomyl sulphonates. Examples of suitable polymers include polycarbamoyl sulphonates, bunte salt polymers, the amphoteric polymers and anionic acrylate emulsions. Cationic polymers such as a polyamideepichlorhydrin polymer, or azetidinium polymers, may also be used provided they are compatible with the chlorinated polymer emulsion used, if a cationic emulsion is employed. When the preferred chlorinated polymer emulsions are used, which are anionic, it is preferred to use anionic anti-felt polymers. This teaching of amphoteric polymers and anionic acrylate emulsions and cationic polymers encompasses the broad language of cleaning surfactants and textile fiber softening agents. See col.1,ln.55-65.

Benisek et al. illustrate in claim 4, (in col. 9, the second formula) exactly the same claimed elected formula recited by the instant claims 36-37. Regarding the pH of the composition, Benisek et al. teach a pH of about 4. See claim 1.

Benisek et al. do not teach the claimed pH of about 5.

It would have been obvious for one of ordinary skill to arrive at the claimed process of treating a textile with the claimed composition having a pH of about 5, since Benisek et al. illustrate in claim 4, (in col. 9, the second formula) exactly the same claimed elected formula having a pH of about 4 and furthermore one of ordinary skill would have been apprised to modify the pH of the composition by optimizing the amount of HCl and citric acid in the aqueous composition to facilitate exhaustion of the polymer onto the textile.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PREETI KUMAR whose telephone number is (571)272-1320. The examiner can normally be reached on 7:30 am-3:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. K./  
Examiner, Art Unit 1796

/Gregory R. Del Cotto/  
Primary Examiner, Art Unit 1796